

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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WILLIAM A. GROSS CONSTRUCTION
ASSOCIATES, INC.,

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:
:
07-CV-10639-LAK

Plaintiff,

-against-

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Defendant.
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AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Third-Party Plaintiff,

THIRD-PARTY ANSWER

-against-

CAULDWELL-WINGATE COMPANY, LLC,

Third-Party Defendant.
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Third-Party Defendant Cauldwell Wingate Company, LLC, sued herein as Cauldwell-Wingate Company, LLC ("Cauldwell Wingate"), by its attorneys Ingram Yuzek Gainen Carroll & Bertolotti, LLP, as and for its answer (the "Answer") to the Third-Party Complaint in this action (the "Third-Party Complaint"), alleges as follows:

1. As to the allegations of paragraph 1 of the Third-Party Complaint, admits that the third-party claims are related to the claims in the main action and otherwise respectfully refers the issues of law raised therein, including jurisdictional issues, to the Court.

2. As to the allegations of paragraph 2 of the Third-Party Complaint, admits that Cauldwell Wingate is not a citizen of Illinois, denies knowledge or information sufficient to form a belief as to the citizenship of Third-Party Plaintiff American Manufacturers Mutual

Insurance Company ("American Manufacturers") and otherwise respectfully refers the issues of law raised therein, including jurisdictional issues, to the Court.

3. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 3 of the Third-Party Complaint.

4. Admits the allegations of paragraph 4 of the Third-Party Complaint, except denies knowledge or information sufficient to form a belief as to the citizenship of American Manufacturers and clarifies that Cauldwell Wingate is organized by the name Cauldwell Wingate Company, LLC, not Cauldwell-Wingate Company LLC.

5. As to the allegations of paragraph 5, 6 and 7 of the Third-Party Complaint, admits that William A. Gross Construction Assocs., Inc. ("Gross") is the Plaintiff in this action and respectfully refers the Court to the Amended Complaint, which was filed with the Court on or about December 11, 2007, and which speaks for itself.

6. As to the allegations of paragraphs 8 and 9 of the Third-Party Complaint, admits that American Manufacturers was Cauldwell Wingate's surety on a Labor and Material Payment Bond dated on or about December 27, 2002, and otherwise respectfully refers the terms of that agreement, which raise issues of law, to the Court.

7. As to the allegations of paragraphs 10 and 11 of the Third-Party Complaint, admits that Cauldwell Wingate signed a written indemnity agreement dated on or about December 27, 2002, and otherwise respectfully refers the terms of that agreement, which raise issues of law, to the Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

8. The Third-Party Complaint fails to state a claim against Cauldwell Wingate for which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

9. If, in fact, Gross sustained any of the damages alleged in the Amended Complaint, those damages arise from the breach of contract and/or duty of non-parties to this action and, accordingly, Cauldwell Wingate is not liable for any indemnity payments.

WHEREFORE, Cauldwell Wingate demands judgment: (i) dismissing the Third-Party Complaint in its entirety; and (ii) for such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 19, 2008

**INGRAM YUZEK GAINEN
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